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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.K., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

C.K.,

Defendant and Appellant.

D080341

(Super. Ct. No. J243867)

APPEAL from an order of the Superior Court of San Diego County,
Robert Trentacosta, Judge. Reversed in part and remanded with directions.

Charles R. Khoury, Jr. and Jill Kent, under appointment by the Court
of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters and Charles C.
Ragland, Assistant Attorneys General, Melisa A. Mandel and Joseph C.
Anagnos, Deputy Attorneys General for Plaintiff and Respondent.

C.K. appeals from a restitution order issued after he admitted selling or
furnishing a controlled narcotic substance (Health & Saf. Code, § 11352,

subd. (a)) and the juvenile court adjudged him a ward of the court under Welfare and Institutions Code¹ section 602.

On appeal, C.K. argues: (1) there was no evidence his furnishing fentanyl caused the victim's death so as to make him responsible for causing the economic losses the victim's family incurred; and, alternatively, (2) the court abused its discretion by ordering him to pay the entire cost of the victim's burial plot, without ordering an offset based on the fact the victim's family member was also buried in the same plot. We conclude there was substantial evidence of causation, but we agree the court should have ordered an offset in the costs related to the burial plot. We reverse the portion of the restitution order dealing with the burial plot, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

According to the probation report, in May 2021, San Diego Police officers and paramedics responded to a 911 call regarding an unresponsive juvenile identified as C.W. They could not resuscitate him, and he died shortly afterwards. Investigators found in C.W.'s trash can a small plastic bag containing residue that tested positive for fentanyl. C.W.'s friend, C.K., was suspected of selling C.W. illicit drugs. Investigators found electronic communication between C.W. and an individual they believed to be C.K. C.W. asked the person for "yerc" in exchange for a one ounce silver coin. The investigators believed "yerc" was drug slang for Percocet.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² We deny C.K.'s motion to augment the record with documents related to proceedings held after the court's challenged order, as they are not necessary for our disposition of this appeal.

When C.K. was arrested, investigators found in his wallet a small plastic bag similar to the one found in C.W.'s trashcan, and some pills that tested positive for fentanyl.

At a restitution hearing, defense counsel stated the factual basis for C.K.'s plea: "On May 5, 2021, [C.K.] unlawfully furnished a controlled substance, fentanyl, to his friend." Defense counsel summarized the probation report findings, stating C.K. "took responsibility at an early stage in this case." Defense counsel reiterated, "[C.K.] has taken responsibility, but what ends up occurring in this case is [he] does not take a silver coin. He does not take money for this. They decide to trade a portion of the drugs, so it is not the showing of a sophisticated drug dealer[.]"

Also at the restitution hearing, C.K. assumed responsibility for his role in causing C.W.'s death in a letter he read aloud: "On May 5th, 2021, I found out that I lost my best friend to a drug overdose. Just that night before, [C.W.] and I shared what I soon found out would be the last time I would see him. My last memory of my best friend was us using drugs together. I even used the exact pill that tragically took his life." C.K. added: "I told myself from the very beginning when I found out that [C.W.] passed, I'm going to take responsibility for my actions. I can't help but feel heartbroken that [C.W.] would be still be *[sic]* alive if I never gave him that pill. I don't think that I can get over this fact ever. I never wanted to hurt him. Remember, the last time I saw [C.W.] is when I shared my drugs with him. Just as [C.W.] would do for me, I thought I was helping him, but rather, I was fueling his addiction." C.K. continued: "Being incarcerated slapped me in the face, a slap that still stings and hurts over two months later, but even with my pain and sorrow, my eyes were open. I was finally aware and sober, and I started

to feel emotions again that were really intense. I felt the damage I had caused to myself, my family, and to [C.W.] and his loved ones.”

At the same hearing, C.W.’s father spoke about encountering C.W. without a pulse, and the failed attempts to resuscitate him. The father stated his conviction C.W. died from fentanyl overdose.

Addressing C.K. at the dispositional hearing, the court stated: “I don’t believe you wanted it to happen to [C.W.] or anyone else, and I know you were suffering your own addiction and will be for the rest of your life, but at the same point, it strikes me, you know, seeing the messages that were on social media, seeing the money, seeing the amount of pills, seeing the posts acknowledging the danger of drugs being laced with fentanyl, it strikes me that it’s not really just a case of two boys who were addicted. Because, [C.K.], the ultimate responsibility falls with you, and you were the one that provided [C.W.] the pill that killed him.” The court concluded: “So I’m assuming, [C.K.], that your addiction was your motivation for selling drugs. At the same point, it wasn’t just two boys, you know, on this particular circumstances [*sic*] being addicts, because you were selling in large quantities to—for money, and with things that were laced with fentanyl. And your own messages acknowledge that you knew of the danger of the fentanyl and pills being laced with that and people dying from that, and you disregarded that. [¶] I mean, you disregarded the knowledge and the danger of loss of life.”

The court adjudged C.K. a minor, and concluded the decedent’s family

was entitled to restitution under section 730.6, subdivision (j)(1)³ and ordered restitution in the amount of \$36,822.38, which included \$18,641.22 for a burial plot.

DISCUSSION

I. *Challenge to Evidence of Causation for Purposes of Restitution*

C.K. contends there was no proof that his furnishing of fentanyl to C.W. caused his death so as to support the court’s restitution award. He argues, “one can scour the record and find not one scintilla of proof that [C.W.] died as a result of ingesting any drug at all much less a drug [C.K. furnished him.] [¶] There is no autopsy report citing the cause of C.W.’s death.” He therefore argues “the award of restitution of \$38,410.38 must be stricken in its entirety.”

The People argue that substantial evidence was presented at the restitution hearing in the form of text messages between C.K. and C.W., statements by C.K.’s mother and father at the restitution hearing; the probation report, defense counsel’s representation and C.K.’s statement at the restitution hearing.

A. *Background*

At the restitution hearing, defense counsel argued that under *People v. Ollo* (2021) 11 Cal.5th 682, C.K.’s liability was cut off “because of the voluntariness of [C.W.’s] actions after the purchase of the drugs.” However,

³ Section 730.6, subdivision (a)(1) provides: “It is the intent of the Legislature that a victim . . . who incurs an economic loss as a result of the minor’s conduct shall receive restitution directly from that minor.” Subdivision (j)(1) allows restitution for the victim’s immediate family.

defense counsel recognized that case does not mention restitution, which the juvenile court has broad discretion in ordering.⁴

In finding causation, the court ruled: “[T]he People’s restitution brief and all of the attachments in the court’s view make a prima facie showing of losses attributable to [C.K.’s] conduct. [¶] In this case the court must decide whether [C.K.’s] conduct, that is furnishing fentanyl to the decedent, was a substantial factor in causing the victim’s economic losses. [¶] In this case the economic losses . . . detailed have to do with the funeral and burial and memorial expenses for [C.W.]. As such, they are directly related. Because of the court’s finding in this case, the prima facie finding having been shown, the burden shifts to the defense to disprove the amount of loss that is claimed by the victim.”

B. *Applicable Law*

Restitution is constitutionally and statutorily mandated in California. (Cal. Const., art I., § 28, subd. (b)(13)(A); Pen. Code, § 1202.4.) Penal Code section 1202.4, subdivision (a)(1) authorizes restitution for the “victim of a

⁴ On appeal, C.K. quotes *Ollo* for the proposition that “the voluntariness of a victim’s ingestion is a key consideration in whether a defendant personally inflicts great bodily injury in the drug furnishing context.” (*People v. Ollo, supra*, 11 Cal.5th at p. 693.) He also cites other cases quoted in the *Ollo* decision. C.K. does not apply any of those cases to the facts of this case. Accordingly, we treat any potential argument based on those cases as forfeited. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408-410 [every brief must cogently and precisely present argument supporting its assertions and provide meaningful legal analysis; otherwise, assertions may be deemed forfeited].) We recognize that C.K. develops his argument slightly more in his reply brief, but we generally do not address arguments made for the first time in reply briefs. (See *In re Tiffany Y.* (1990) 223 Cal.App.3d 298, 302-303 [argument raised for first time in reply brief is waived].) In any event, C.K. has not explained how *Ollo* is helpful to him in this context, as it does not address the issue of restitution.

crime who incurs an economic loss as a result of the commission of a crime.” Section 730.6 defines “ ‘victim’ ” to include “[a] person who has sustained economic loss as the result of a crime and who . . . [¶] . . . [a]t the time of the crime was the parent . . . of the victim.” (§ 730.6, subd. (j)(4)(A); accord, Cal. Const., art. I, § 28, subd. (e).)

We review a juvenile court’s decision to award restitution for abuse of discretion. (*Luis M. v. Superior Court* (2014) 59 Cal.4th 300, 305.) We will find an abuse of discretion where the restitution order lacks “ ‘a rational and factual basis for the amount of restitution ordered’ ” or where the order “ ‘is based on a demonstrable error of law.’ ” (*In re S.E.* (2020) 46 Cal.App.5th 795, 803-804.) In cases like this, where the minor challenges the factual basis for the restitution order, we must determine whether substantial evidence supports the order. (*In re A.M.* (2009) 173 Cal.App.4th 668, 674.)

“A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question. Once such evidence is found, the substantial evidence test is satisfied.” (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) “Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding.” (*Ibid.*) “We do not reweigh or reinterpret the evidence; rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact.” (*People v. Baker* (2005) 126 Cal.App.4th 463, 469.) Even, “ ‘incompetent testimony, such as hearsay or conclusion, if received without objection takes on the attributes of competent proof when considered upon the question of sufficiency of the

evidence to support a finding.” ’ ’ (*People v. Panah* (2005) 35 Cal.4th 395, 476.)

In determining whether there is a causal connection between the defendant’s act and the victim’s loss, the trial court may apply tort principles of causation. (*People v. Jones* (2010) 187 Cal.App.4th 418, 425 [there is “no reason why the various principles involved in determining proximate causation under California tort law should not also apply in awarding victim restitution under California criminal law”].) In California, courts apply the substantial factor test in determining proximate cause. (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1321.) This test requires “ ‘ “that the contribution of the individual cause be more than negligible or theoretical.” ’ ” (*Ibid.*) A force that has “ ‘ “only an ‘infinitesimal’ or ‘theoretical’ part in bringing about injury, damage or loss is not a substantial factor” [citation], but a very minor force that does cause harm is a substantial factor.’ ” (*Id.* at p. 1322.)

“ ‘ “A victim’s restitution right is to be broadly and liberally construed.” [Citation.] “ ‘When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.’ ” [Citations.] [Citation.] However, a restitution order ‘resting upon a “ ‘demonstrable error of law’ ” constitutes an abuse of the court’s discretion. [Citation.] [Citation.] ‘In reviewing the sufficiency of the evidence [to support a factual finding], the “ ‘power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the trial court’s findings.” [Citations.] . . . “If the circumstances reasonably justify the [trial court’s] findings,” the judgment may not be overturned when the

circumstances might also reasonably support a contrary finding.’” (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.)

C. *Analysis*

As set forth above, the evidence in the record demonstrates C.K.’s actions in providing the fentanyl to C.W. were a substantial factor in causing C.W.’s death, which resulted in the economic losses incurred here. The investigators’ forensic tests detected fentanyl in a baggie found in C.K.’s trash can, similar to the one found in C.W.’s trash can, and on some pills in C.K.’s possession. C.W.’s father recounted encountering C.W. lifeless, and his belief C.W. had died of a fentanyl overdose. C.K. himself assumed responsibility for his friend’s death, stating he provided the drugs to C.W. The totality of this evidence is sufficiently reasonable, credible, and solid to support the juvenile court’s causation finding. C.K.’s actions in the cause of C.W.’s death was much more than “infinitesimal” or “theoretical,” and therefore the court did not err in requiring him to pay restitution.

To the extent the record lacks an autopsy report or other proof of the cause of death, the issue was not raised in the juvenile court, where the omission could have been corrected. Instead, all parties proceeded under the belief that substantial evidence was provided by C.K.’s acceptance of responsibility and his recognition that the pills he retained from the batch he gave C.W. also contained fentanyl.

II. *The Burial Cost*

C.K. alternatively contends that requiring him to pay for the entire cost of C.W.’s burial plot, in which C.W.’s predeceased uncle is also buried, does not serve any statutory purpose as it is not related to the offense or conviction, nor does it act as an appropriate deterrent or rehabilitative measure; therefore, his portion of the burial plot cost should be halved.

In the motion for restitution, the prosecution introduced evidence that C.W.'s mother paid \$18,641.22 for the burial plot.

At the restitution hearing, defense counsel pointed out that two bodies were buried in that plot, C.W.'s uncle and C.W.: "I still think it is akin to a windfall for the uncle's estate because whether or not it was purchased for [C.W.], the reality is that two bodies are buried there now, one which was deceased before [C.W.]. I still don't think it's appropriate that C.K. be responsible for paying for a portion of where the uncle is buried. It would create a windfall for the family overall."

The People countered by offering the testimony of the family services coordinator at the burial grounds: "He's willing to testify about what the breakdown of the costs are. The grand total of [almost] \$19,000 is a flat rate for the burial plot itself. It does not matter if one descent [sic] or two or four or ten are put in that plot. That plot is going to cost approximately \$19,000 no matter what. [¶] The confusion lies in the invoice itself, because it says there are two internment rights with its respective costs. I anticipate [he] would say that it's documented like that for housekeeping purposes. They need to keep track of how many decedents are in that plot. Be that as it may, the plot is \$19,000 approximately. [C.W.'s mother] provided proof she paid for a good portion of the amount either through her checking or credit card account. The remainder is through [C.W.'s uncle's] estate. Of note, though, regarding [C.W.'s uncle's estate, C.W.'s mother] is the primary beneficiary of that estate."

The court denied the defense request to halve C.K.'s portion of the burial plot cost.

"A restitution order is intended to compensate the victim for its actual loss and is not intended to provide the victim with a windfall." (*People v.*

Chappelone (2010) 183 Cal.App.4th 1159, 1172.) But, “[t]here is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable.” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121; *Chappelone*, at p. 1172.) The court need only use a rational method that is reasonably calculated to make the victim whole. (*Chappelone*, at p. 1172.) The amount of restitution to be paid by the defendant may exceed the losses for which they are held culpable, as long as the restitution is “‘narrowly tailored to serve a purpose described in section 1203.1.’” (*Carbajal*, at p. 1126.)

In *People v. Chappelone*, *supra*, 183 Cal.App.4th 1159, 1167, the defendants pleaded guilty to conspiracy to commit grand theft from a department store. They challenged their restitution order on several grounds, including that the court required them to pay the claimed restitution amounts, which were derived from the last scanned retail price for certain merchandise, even though some items were display or clearance items that the store would not sell for full price. (*Id.* at p. 1173.) The court agreed with defendants and concluded, “More specifically, as to [certain] items, if it was an item that had been put on clearance but still did not sell, it would have scanned at the last clearance price. If it was a salvage item because it was missing a component . . . it would have scanned at the full retail price. These items, however, had been destined for “donation” at 30 cents on the dollar of the last retail price. Consequently, on all such items, [the retail store] was awarded a windfall of 70 percent.” (*Id.* at pp. 1173-1174.)

Likewise here, we conclude the juvenile court abused its discretion in ordering C.K. to pay the entire cost of the burial plot in which C.W.’s uncle was also buried because doing so gives C.W.’s family a windfall. The court did not narrowly tailor the amount of the costs C.K. should pay. We reverse

the portion of the restitution order dealing with the burial plot costs, and remand for the court to conduct further proceedings and reapportion C.K.'s share of those costs.

DISPOSITION

We reverse the portion of the restitution order relating to the burial plot costs, and otherwise affirm. On remand, the court is directed to recalculate C.K.'s share of the burial plot costs, and issue a new restitution order consistent with this opinion.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

DATO, J.